Supreme Court, U.S.
FILED
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(2)

No. 96-1566

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

DOUGLAS L. FOWLKES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

MOTION FOR LEAVE TO AMEND PETITION FOR CERTIORARI

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6 pp

Pursuant to Supreme Court Rule 21, petitioner Douglas L. Fowlkes respectfully moves for leave to amend his petition for certiorari in Fowlkes v. United States, No. 96-1566, to add a question on which the Court granted certiorari in another case in February of this year. In support of this motion, petitioner states as follows:

1. The petition in this case seeks a writ of certiorari to review the judgment of the Eleventh Circuit in United States v. Fowlkes 100 F.3d 970 (11th Cir. 1996) (reprinted as the appendix to the petition). The petition was received on January 23, 1997 and docketed on April 3, 1997. No response to the petition has yet been filed.

2. The petition currently raises one issue: whether the evidence was sufficient to convict the defendant on a charge of violating 18 U.S.C. §666 in light of the government's failure to prove that the payment to the public official was in exchange for a specific official act in the future or a reward for a specific official act undertaken by the petitioner in the past.

3. By this motion, petitioner seeks to add a second question to his petition, which would read as follows:

> 2. Whether 18 U.S.C. §666 is properly construed to reach bribery of state and local officials that does not relate to any disbursement of, or impingement on, federal funds.

This is the question on which the Court granted review in Salinas v. United States, No. 96-738, on February 24, 1997.

4. This question is squarely presented by this case. Petitioner Douglas L. Fowlkes has consistently challenged his conviction under 18 U.S.C. § 666 on the ground that the government failed to prove that the airport received any federal funds. App. 2a. The Eleventh Circuit rejected this argument, app. 3a.

5. Shortly after the filing of the petition in this case, this court granted certiorari in Salinas on two questions, one of which is:

> What kind of cases involving state employees are subject to prosecution under the Federal Bribery Statute, 18 U.S.C. §666? Do such cases include cases where no federal funds are disbursed or impinged.

Petition for Certiorari, Salinas v. United States, No. 96-739, at i.

6. The petitioner in Salinas argued that certiorari should be granted to resolve a conflict with the decisions of the Third Circuit in United States v. Cicco, 938 F.2d 441 (3d Cir. 1991), and the Ninth Circuit in United States v. Wyncoop, 11 F.3d 119 (9th Cir. 1993). Id at 6-7; see also Brief for the United States in opposition, Salinas v. United States , No. 96-739, at 9-12 & n.3.

7. Given that the Court will already be deciding in Salinas whether 18 U.S.C. § 666 should be construed to include a federal funding element, petitioner respectfully suggests that the Court examine the issue in the context of both cases.

8. There is no risk that respondent will be prejudiced by the proposed amendment to the petition. This motion is being filed and served on respondent within two weeks of the docketing of the petition for certiorari in this case.

9. The Court's ruling in Salinas, regardless of its outcome, will not completely resolve this case. The other issue on which petitioner has sought the Court's review is not presented in Salinas itself.

CONCLUSION

The motion to amend the petition for certiorari in Fowlkes v. United States, No. 96-1566 should be granted.

Respectfully Submitted,

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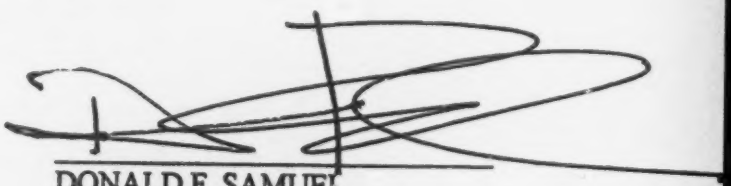
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION FOR LEAVE TO AMEND PETITION FOR A WRIT OF CERTIORARI has been served upon the Solicitor General of the United States, Room 5614, Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530 by United States Mail Delivery with proper postage affixed thereon.

This the 18 day of April, 1997.



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